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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,992	01/02/2003	Mark Holy		9224

7590 09/09/2004
Robert E. Kleve
1103 24th Ave. S.
Grand Forks, ND 58201

EXAMINER

BATSON, VICTOR D

ART UNIT PAPER NUMBER

3671

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/677,992

Applicant(s)

HOLY, MARK

Examiner

Victor Batson

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

Claim Objections

Claims 2,3 are objected to because of the following informalities: In claim 2 lines 5-6, "conveying means" lacks proper antecedent basis as antecedent basis has previously been established for "conveying means" in line 3, and it is unclear if applicant is referring to the previous conveying means or establishing a second conveying means. In claim 2 line 5, it appears that "locations" should be changed to "location". In claim 2 line 5, "the rear of the frame" lacks proper antecedent basis. In claim 2 line 7, it appears that "of pairs of discs" should be inserted after "plurality". In claim 2 line 7, "whereby mechanism" is not understood. In claim 3 line 5, "conveying means" lacks proper antecedent basis as antecedent basis has previously been established for "conveying means" in line 3, and it is unclear if applicant is referring to the previous conveying means or establishing a second conveying means. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Mayeda et al. (4,753,297).

Mayeda et al. discloses a harvester including a mobile frame, a plurality of pairs of beet digging discs aligned along a first row and a second set of a plurality of pairs of

Art Unit: 3671

discs aligned laterally of one another along a second row on the frame behind the first row as shown in figure 7.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 & 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Erdman (2,972,383) in view of Mayeda et al. (4,753,297).

Erdman discloses a beet harvester comprising a plurality of pairs of discs, conveying means for conveying beets rearwardly to a common location with a mechanism for conveying the beets off the mobile frame. Erdman however lacks using a second plurality of pairs of discs.

Mayeda et al. teaches that it is known in the harvesting art to use first and second plurality of discs with the second plurality of discs being located behind the first plurality of discs. The use of a single plurality of discs leaves larger furrows and mounds leading to more erosion and an uneven surface for vehicles to operate on, whereas the use of multiple rows of discs leaves a more even and level surface.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the device of Erdman, by using a second plurality of pairs of discs as taught by Mayeda et al., to leave a more level field for further farming.

Conclusion

Art Unit: 3671

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor Batson whose telephone number is (703) 305-6356. The examiner can normally be reached on Monday through Friday (except Wednesday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on (703) 308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 6, 2004



Victor Batson
Primary Examiner
Art Unit 3671